

In the
Circuit Court of Appeals
of the
United States of America
in and for the
Ninth Circuit

ANNIE E. WINSLOW, and AN-
NIE E. WINSLOW, as Admin-
istratrix of the Estate of Lor-
enzo N. Winslow, Deceased,

Appellants,

—VS.—

THE MUTUAL LIFE INSUR-
ANCE COMPANY OF NEW
YORK, a corporation,

Appellee.

APPELLANT'S REPLY BRIEF

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Cases cited by appellee do not answer appellant's contentions herein, and are to be distinguished from instant case on the facts and issues presented in pleadings.

The direct question involved in this appeal is not the authority of Moore, the agent, to write interim insurance, effective immediately, for it must be admitted that he

had such authority (Testimony of Murray, Trans. P. 53). Further the company left it to the agent to collect the premium and issue the receipt.

The general rule which imputes an agent's knowledge to the principal is well established; the underlying reason for it is that an innocent third party may properly presume the agent will perform his duty, and applies only where actual knowledge of lack of authority of the agent is wanting.

Jensen v. New York Life Ins. Co. 59 Fed. (2d) 957.

referred to in **N. Y. Life vs. McCreary**, 60 Fed. (2d) 355, 8.

The question was not considered in cases cited by appellee as to responsibility of the company for the fraud, inadvertance or neglect of the agent, in performing acts admittedly within his authority.

Herein the agent had the authority to make effective the kind of insurance the applicant asked for and which the agent admitted he told the insured he was going to get.

There was no fraud or misrepresentation on part of applicant.

The agent's fault, neglect or fraud, whatever it may be

termed, alone was responsible, under the circumstances disclosed, for the failure to have the proper form of receipt issued, and the proper blanks of the application filled in.

Authorities cited in appellant's Opening Brief, as to responsibility of the company for the acts of its agents, or the negligent failure to act, stand unanswered.

The testimony of the agent as to his method of doing business and issuing receipts, and making remittances so as to make the insurance effective immediately, stands uncontradicted.

The only penalty referred to in the Company's instructions, or manual, to agents is that if they disregard the Company's requirements the agents are subject, or liable, to dismissal. Agent Moore has continued his agency in this case to time of Trial.

Certainly, the applicant who relies upon an agent's skill and integrity in attending to the necessary details and procedure of filling in the application and issuing the necessary receipt, and who is not given an opportunity to readily acquaint himself with the peculiar limitations placed upon the agent, as to his authority, nor as to what the agent must do in the matter of issuing receipts and filing in blanks, should not be penalized for the negligence, fraud or inadvertance of the agent; nor should his beneficiaries be penalized by reason thereof.

Appellee has cited no authority wherein legal responsi-

bility of a company has been denied, where the issue and fact of fraud and neglect of agent were squarely before the Court, and the evidence without contradiction supported the same.

It is, accordingly, submitted that judgment should be reversed.

H. C. Nelson

Attorney for Appellants.